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NO.

Supreme Court, U.S.

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CLERK

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1989

ADRIAN ANTONIU

PETITIONER

V.

SECURITIES AND EXCHANGE COMMISSION

RESPONDENTS.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

APPENDIX TO
THE PETITION FOR WRIT OF CERTIORARI

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94P



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**Opinion, United States Court of Appeals,
Eighth Circuit, Antoniou v. SEC, Nos. 85-5384
and 88-1095, June 19, 1989**

**United States Court of Appeals
FOR THE EIGHTH CIRCUIT**

Nos. 85-5384 and 88-1095

Adrian Antoniu,	*
	*
Petitioner,	* Appeals from
	* Petitions for
v.	* Review of Orders
	* of the Securities
Securities and Exchange	* and Exchange
Commission,	* Commission
	*
Respondent.	*

Submitted: October 17, 1988

Filed: June 19, 1989

**Before LAY, Chief Judge, FLOYD R. GIBSON,
Senior Circuit Judge, and McMILLIAN,
Circuit Judge**

LAY, Chief Judge.

**Adrian Antoniu (Antoniou) worked from
August 1972 until May 1975 in the corporate**

finance department of Morgan Stanley & Co., Inc. (Morgan Stanley), a broker-dealer registered with the Securities and Exchange Commission (SEC or Commission). Antoniu entered into an insider trading conspiracy with James N. Newman (Newman), a securities trader. Antoniu would obtain the non-public information about imminent takeover bids by Morgan Stanley's clients. Newman would then buy large blocks of stock of the targeted companies and later sell the stock at a profit. Antoniu shared in the profits.

Morgan Stanley asked Antoniu to resign and he took a position at Kuhn Loeb & Co. (Kuhn Loeb) (later Lehman Brothers Kuhn Loeb, Inc.) in the newly established mergers and acquisitions department. Antoniu continued to receive market-sensitive non-public information from Morgan Stanley employee E. Jacques Courtois. While at Kuhn Loeb, Antoniu repeated the pattern: he misappropriated the

information and passed it to Newman, who bought and sold stocks of target companies. The conspirators split the profits. Kuhn Loeb fired Antoniu in 1978 when he was investigated for insider trading violations. Antoniu then moved to Italy.

On November 18, 1980, Antoniu pled guilty to two counts of misappropriating information in securities markets in violation of 15 U.S.C. § § 78j(b) and 78ff, and Rule 10b-5, 17 C.F.R. 240.10b-5 and 18 U.S.C. § 2, as part of a plea bargain.¹ He was sentenced to three months' imprisonment, thirty-six months' suspended sentence and a \$5000 fine, on August

¹Antoniu was only charged with two counts. The two counts involved criminal misuse of information about two impending takeovers: that of Northrup King & Co. by Sandoz Seed Co., and that of Deseret Pharmaceutical Co., Inc. by Warner Lambert, Inc. The SEC determined that these two transactions were representative of at least fourteen acquisitions in which Antoniu had misappropriated non-public information. As a result of Antoniu's agreement to the plea bargain, the U.S. Attorney's Office did not further prosecute Antoniu. See Brief for Appellee at 5 nn.3,4.

11, 1982. On March 31, 1983, the sentence was reduced to thirty-nine months' unsupervised probation and a \$5000 fine.

In 1984 Antoniu moved to Minnesota to take a job with M.H. Novick & Co. Due to Antoniu's criminal conviction, Antoniu and Novick sought approval for the employment from the National Association of Securities Dealers (NASD). After an evidentiary hearing, NASD approved the employment on June 3, 1985. Antoniu went to work for Novick later that summer.

On September 3, 1985, the SEC vetoed NASD's approval of that particular employment. (This set of proceedings is hereinafter referred to as Antoniou I). One of the participating commissioners was Charles C. Cox. On September 19, 1985, the SEC started a second set of proceedings (hereinafter referred to as Antoniou II). Commissioner Cox also took part in the SEC's decision to institute Antoniou II. The purpose of this

second set of proceedings was to determine whether Antoniu should be subjected to sanctions due to his criminal conviction. In other words, the Commission was to determine whether it was in the public interest to exclude Antoniu from any employment in the securities business.²

While Antoniu II was pending, on October 18, 1985, Commissioner Cox gave a speech in Denver entitled "Making the Punishment Fit the Crime -- A Look at SEC Enforcement Remedies." The speech outlined two recent cases before the SEC in which the Commission had imposed sanctions on firms or persons. Commissioner Cox said that each of the sanctioned entities was an "indifferent violator" and further expounded:

Mr. Antoniu, on the other hand, can be appropriately termed a violator, for he pled guilty to criminal

²Since Antoniu I concerned a bar to one particular employment and Antoniu II concerned a permanent bar of any securities-related employment, the government asserts Antoniu II encompasses Antoniu I.

violations of the federal securities laws. In his positions at Morgan Stanley and Kuehn [sic], Loeb and Company, he provided inside information on several occasions to accomplices who traded while in possession of that information. Although he was prosecuted for this conduct, Mr. Antoniu recently applied to become associated with a broker-dealer. Apparently, Mr. Antoniu believed that, since his rehabilitation was complete, there was no further reason to prevent his future dealings in the securities industry. In that case, the Commission responded by denying Mr. Antoniu's request for association.

One issue that frequently arises with respect to individuals whom I call "indifferent violators" is the length of time that a Commission remedy should remain in effect. This may come up when originally structuring the settlement of an injunction or an administrative proceeding, or in later applications for relief from an injunction or Commission order.

* * * In the case of Mr. Antoniu, his bar from association with a broker-dealer was made permanent.

(Emphasis added).

Cox's words describing Antoniu's bar as permanent can only be interpreted as a

prejudgment of the issue. We emphasize that the speech was made while the Antoniou II proceedings were pending.³ The text of the speech was also printed and distributed by the SEC. Following Cox's public denouncement of him, Antoniu made multiple requests in the administrative proceedings for permission to develop the record on the issue of bias. His requests were denied. Antoniu also made a motion on April 6, 1986, to disqualify the whole Commission. The motion was denied and specifically, Commissioner Cox refused to recuse himself. He continued to participate in the Antoniou II proceedings, including the SEC's rejection of Antoniu's proposed settlement. Commissioner Cox did finally recuse himself, on December 3, 1987, the day

³The Antoniou I order was dated September 3, 1985. Antoniou II proceedings were instituted September 19, 1985, and the speech was given on October 18, 1985. The Antoniou II initial decision, permanently barring Antoniu from all securities-related employment, was filed on September 23, 1986. The final opinion of the Commission was filed on December 3, 1987.

the Antoniou II opinion of the Commission was handed down.

In the final Antoniou II opinion, the SEC found:

Antoniou's misconduct could hardly be more serious. As the law judge observed, it was not the product of impulse or attributable to a temporary lapse in judgment or ethics. Rather, it arose from a carefully conceived scheme that Antoniu devised, using accomplices that he recruited. He engineered a protracted and complex operation to betray his employers' trust by misappropriating confidential information for personal gain.

* * * *

As we have so often emphasized, the securities industry is heavily dependent upon the integrity of its participants. We must protect the public from persons like Antoniu whose demonstrated conduct falls so far below acceptable standards of honesty and trust. We recognize the serious effect of the sanction we are imposing. Yet we are convinced that a lesser remedy will not suffice. Under all the circumstances, particularly the egregious and protracted nature of Antoniu's misconduct, we conclude that the public interest requires

that Antoniu be barred from association with any broker or dealer.

In the Matter of Adrian Antoniu, S.E.C. Rel.
No. 25169, Admin. Proc. File No. 3-6566 at 7-
8 (Dec. 3, 1987) (hereinafter Antoniou II
opinion).

Antoniou appeals the SEC's orders, raising a number of arguments. After careful consideration, we find that only one of them merits our attention. Due in part to Commissioner Cox's remarks about Antoniu made in the Denver speech, Antoniu claims that the proceedings were biased or at least that they were impermissibly tainted with the appearance of impropriety. Antoniu raises several other points⁴ besides Cox's involvement in support

'Antoniou argued "that he was singled out for prosecution because he is foreign-born, that he was denied the opportunity to prove his allegations concerning [SEC's] motivation and bias, and that his cross-examination of certain staff witnesses was improperly curtailed when they invoked grand jury secrecy rules." Antoniou II opinion at 5.

of his claim of the SEC's prejudiced treatment of his case. As to these, we affirm the Commission's finding⁵ that they lack substance. We do however, address Commissioner Cox's behavior in regard to this case.

We begin with the fundamental premise that principles of due process apply to administrative adjudications. See Amos Treat & Co. v. SEC, 306 F.2d 260, 264 (D.C. Cir. 1962). The Supreme Court has described the requirements of due process: "A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases." In re Murchison, 349 U.S. 133, 136 (1955). The Court has demanded not only a fair proceeding, but also that "'justice must satisfy the appearance of justice.'" Id., citing Offutt v. United States, 348 U.S. 11,

⁵Antoniou II opinion at 5-6.

14 (1954). The relevant inquiry is thus whether Commissioner Cox's post-speech participation in the Antoniou II proceedings comported with the appearance of justice.

A number of other courts have entertained similar questions. In Staton v. Mayes, 552 F.2d 908 (10th Cir.) (as amended), cert denied, 434 U.S. 907 (1977), a school superintendent was dismissed by a majority vote of the school board. The members comprising the majority had made statements about the superintendent, both in public and in private, prior to any sort of hearing on the matter. The Tenth Circuit reviewed the trial court's approval of the school board's actions. The court said:

The firm public statements before the hearing by defendant Mayes for the removal of Dr. Staton, and the discussion by defendants Moore and Wade as admitted, reveal a tribunal not meeting the demands of due process for a hearing with fairness and the appearance of fairness.

These were not mere statements on a policy issue related to the dispute, leaving the decision maker capable of judging a particular controversy fairly on the basis of its own circumstances. Nor was this simply a case of the instigation of charges and a statement of them during an investigatory phase by the body that will later decide the merits of the charges.

Instead this case involves statements on the merits by those who must make factual determinations on contested fact issues of alleged incompetence and willful neglect of duty, where the fact finding is critical.

Id. at 914 (citations omitted). The court concluded:

We do not say that such statements in an election campaign or between members were unlawful or improper. However, a due process principle is bent too far when such persons are then called on to sit as fact finders and to make a decision affecting the property interests and liberty interests of one's reputation and standing in his profession.

Id. at 915. The court accordingly vacated the trial court's judgment and invalidated the

superintendent's firing. The court directed that if it wished to do so, the board could make new findings on the matter.

The District of Columbia Circuit has produced two cases which provide us with further guidance.

In Texaco, Inc. v. FTC, 336 F.2d 754 (D.C. Cir. 1964), vacated on other grounds, 381 U.S. 739 (1965) (per curiam), the FTC had charged Texaco with unfair methods of competition in interstate commerce. After a lengthy set of adjudicative proceedings, the examiner found that Texaco had violated the Federal Trade Commission Act. While the case was pending before the examiner after remand⁶ Chairman Dixon made a speech castigating Texaco as one of a number of companies engaging in price fixing and price

⁶The recital of the complex procedural history of the case is omitted here. See 336 F.2d at 756-59.

discrimination. See id. at 759. Texaco's motion to disqualify Dixon was denied, and Dixon refused to recuse himself. The court admonished: "[A]n administrative hearing of such importance and vast potential consequences must be attended, not only with every element of fairness but with the very appearance of complete fairness. Only thus can the tribunal conducting a quasi-adjudicatory proceeding meet the basic requirement of due process." 336 F.2d at 760 (Quoting Amos Treat & Co. v. SEC, 306 F.2d at 267). The court found that Chairman Dixon's speech revealed that he had prejudged the matter. Dixon's continued participation in the proceedings violated due process. The court therefore invalidated the FTC's order.⁷

⁷Because the proceedings at issue there had been extremely protracted, the court went on to the merits. The court, however, advised: "If [Dixon's participation] were the only infirmity in the order, we should be constrained to remand the cases to the Commission for a de novo consideration in which Chairman Dixon does not take part." 306 F.2d at 760.

The District of Columbia Circuit again confronted the issue of Commissioner Dixon's behavior in Cinderella Career and Finishing Schools, Inc. v. FTC, 425 F.2d 583 (D.C. Cir. 1970). There, the court addressed a factual scenario very similar to the one at bar. Federal Trade Commission Chairman Dixon had given a speech in which (without naming the targeted business) he condemned certain advertising practices as deceptive. Dixon's speech was given while the business' appeal from the examiner's decision was still pending before the Commission (including Dixon). The court found that Chairman Dixon should have disqualified himself, saying:

The test for disquaification [sic] has been succinctly stated as being whether "a disinterested observer may conclude that [the agency] has in some measure adjudged the facts as well as the law of a particular case in advance of hearing it." Gilligan, Will & Co. v. SEC, 267 F.2d 461, 469 (2d Cir.), cert. denied, 361 U.S. 896 (1959).

Cinderella, 425 F.2d at 591. The court then remanded the case with instructions "that the Commissioners consider the record and evidence in reviewing the initial decision, without the participation of Commissioner Dixon." Id. at 592.

We turn again to the case before us. Appellant raises a number of challenges to the Antoniou I proceedings. After careful review, we find no fundamental error of law in the action taken by the Commission in Antoniou I. The specific sanction imposed by Antoniou I was well within the discretion of the Commission. As to the Antoniou I proceedings, we affirm.

It has been urged here that an affirmance of the Antoniou II order would moot the Antoniou I appeal. Because we find that Antoniou II must be vacated, we do not address the mootness issue.

After reviewing the statements made by Commissioner Cox, we can come to no conclusion than that Cox had "in some measure adjudged the facts as well as the law of a particular case in advance of hearing it." Gilligan, Will & Co. v. SEC, 267 F.2d 461, 469 (2d Cir.), cert. denied, 361 U.S. 896 (1959). Even though Cox recused himself prior to the filing of the SEC's final decision, there is no way of knowing how Cox's participation affected the Commissioner's deliberations. Accordingly, we nullify all Commission proceedings (including the Commission's rejection of Antoniu's proposed settlement) in which Commissioner Cox participated occurring after Commissioner Cox's speech was given and remand the case to the Commission with directions to make a de novo review of the evidence, without any participation by Commissioner Cox. It is so ordered.

NASD hearing Antoniou with Novick, SD-402,
February 27, 1985, excerpted from first six
pages:

NATIONAL ASSOCIATION OF SECURITIES DEALERS,
INC.

-----	X
In the Matter of	:
the Association	:
-of-	:
ADRIAN ANTONIU	:
As a Registered Representative	: <u>SD-402</u>
with	:
M.H. Novick & Co., Inc.	:
-----	X
February 27, 1985	
11:50 A.M.	

Proceedings before the Board of
Governors, National Association of
Securities Dealers, Inc. held at the
offices of the NASD, 2 World Trade
Center, 98th floor, New York, New
York, on February 27, 1985, at 11:50

A.M.

A P P E A R A N C E S :

JOSEPH R. HARDIMAN

JOHN B. KEMP

ANDREW McR. BARNES

M. H. NOVICK

JOSEPH W. ANTHONY, ESQ.

ADRIAN ANTONIU

PETER MARSHALL

BRUCE SLOVIN

* * *

These proceedings come before a Committee of the National Association of Securities Dealers, Inc., composed of Messrs. Joseph R. Hardiman, a member of the Associations' Board of Governors, and John B. Kemp, a member of District Business Conduct Committee for District No. 12. This Committee has been established for the purpose of determining the

eligibility of M. H. Novick & Co., Inc., a member, Minneapolis, Minnesota, to continue in membership in the Association with Adrian Antoniu in its employ as registered representative.

Mr. Antoniu is subject to a statutory disqualification as a result of his conviction in United States District Court for the Southern District of New York on March 31, 1982 for misappropriating non-public information in the securities markets in interstate commerce. He was sentenced to 39 months probation and a \$5,000 fine.

To aid in its review of the application of M. H. Novick & Co., Inc., to employ Mr. Antoniu, this Committee wishes to take evidence and hear all testimony which may be offered on behalf of the member and Mr. Antoniu with respect to Mr. Antoniu's proposed duties, the methods by which his activities will be supervised and the qualifications and background of the member and its principals.

The Committee also wishes to take evidence and hear testimony with respect to Mr. Antoniu's activities since the date of his disqualification.

At the conclusion of this hearing, the Committee will make a recommendation to the National Business Conduct Committee as to the continuance in membership of M. B. Novick & Co., Inc., with Mr. Antoniu in its employ.

If the National Business Conduct Committee votes unanimously to recommend that M. H. Novick & Co., Inc., be continued in membership with Mr. Antoniu in its employ, written notification to that effect will be forwarded to the Securities & Exchange Commission and a copy will be served upon the member.

If, however, the recommendation of the National Business Conduct Committee is unfavorable or if its recommendation of approval is not by unanimous vote, it shall report its findings and recommendations to the

full Board of Governors of the NASD, for final action by the Board at its meeting currently scheduled for March 15, 1985.

If the Board acts favorably upon the application, it will notify the Securities & Exchange Commission in writing that the member will be permitted to continue in membership in the Association with Mr. Antoniu in its employ.

If the Board of Governors recommends against the continuance in membership of the member with Mr. Antoniu in its employ, the member will be served with a written decision to that effect. Should the Board's determination be unfavorable, the member's attention is called to Article I, Section 13 of the Association's By-Laws and Section 15A of the Securities Exchange Act of 1934 which outline the member's rights in this matter. In all cases, the Board of Governors' determination in this matter will be communicated to you upon the issuance of a

written decision.

We have read the conviction which necessitated this proceeding, the membership continuance application filed by the member and other pertinent documents, all of which are part of the record in this proceeding. Accordingly, you may proceed with the understanding that we are familiar with them.

Should any party to his proceeding desire a copy of the transcript of this hearing, one may be obtained from the court reporter.

Since you have initiated this proceeding and the burden of proof rests with the member and Mr. Antoniu, you may now go forward with your presentation and then we, in turn, will have some questions.

MR. ANTHONY: Thank you. As you have indicated, each of you has material that has enabled you to familiarize yourself with the reasons for the statutory disqualification. We are not here to reargue those facts or to collaterally attack them and we're not going

to waste your time doing that. We're here to explore two questions: Has Mr. Antoniu been rehabilitated and, secondly, can you be assured that M. H. Novick & Company and Mike Novick will supervise Mr. Antoniu in such a fashion that the public interest and confidence is maintained.

In deciding whether or not Mr. Antoniu has been rehabilitated we draw your attention, invite your attention to four questions: Has he acknowledged his guilt? Has he paid his debt to society? Has he tried to undo any damage that he has caused, and in what fashion has he conducted himself over the past seven years since the date he left the business? And it has been almost seven years since he surrendered his license in 1978.

We'll interrupt my remarks at this time to introduce Mr. Bruce Slovin. He's the president of McAndrews & Forbes.

NASD notice, Antoniou with Novick, SD-402, June
3, 1985:

BEFORE THE BOARD OF GOVERNORS
OF THE NATIONAL ASSOCIATION OF
SECURITIES DEALERS, INC.

In the Matter of	: Notice
the Association	: Pursuant
	: to Rule
-of-	: 19h-1 of
	: the
ADRIAN ANTONIU	: Securities
As a Registered Representative	: Exchange
	: Act of
with	: 1934
	:
M.H. Novick & Co., Inc.	: Dated:
	: June 3,
	: 1985

This matter involves the association of
Adrian Antoniu, 1117 Marquette Avenue,
Apartment #2202, Minneapolis, Minnesota 55403,
a person subject to a statutory
disqualification, as a registered
representative with M. H. Novick & Co., Inc.,
120 South Sixth Street, Minneapolis, Minnesota
55401. Mr. Antoniu is statutorily

disqualified as a result of his plea of guilty in United States District Court for the Southern District of New York on March 31, 1983 to charges of willfully and knowingly misappropriating non-public information in the securities markets through interstate commerce in violation of Title 15, U.S.C. Sections 78ff and 78j(b), and Title 18, U.D.C. Section 2. As a result of the conviction, Antoniu was placed on unsupervised probation for 39 months and fined \$5,000.

The information to which Antoniu pleaded guilty charged that, while he was employed in the corporate financing department of Morgan Stanley & Co., Inc., from August 1972 through May 1975, and thereafter while employed in the mergers and acquisition department of Kuhn, Loeb Brothers until July of 1978, he willfully engaged in a scheme to defraud in connection with the purchase and sale of securities by acting on material non-public information in connection with takeover bids and negotiations

for acquisition of companies including Magnavox, Copperweld, Robintech, Hudson Pulp and Paper, Hygrade Food Products, Northrop, King and Company and Deseret Pharmaceutical. The information alleged that three other individuals, who were friends of Antoniu, acted as purchasers of those securities on information supplied by Antoniu. It further alleged that Antoniu obtained inside information from a colleague at Morgan Stanley.

A hearing on the matter was held on February 27, 1985 before a Committee of the Association. Mr. Antoniu appeared and was accompanied by counsel. He was also accompanied by Michael H. Novick, his proposed supervisor and President of M. H. Novick & Co., Inc. Appearing as witness were Bruce Slovin, President, McAndrew and Forbes, and Peter Marshall, President, Peter Marshall & Co., Inc.

M.H. Novick & Co., Inc. has been a member

of the NASD since 1972. It conducts a general securities business and employs five registered principals and 18 registered representatives. The firm's revenues are derived chiefly from over-the-counter principal trading (24%); underwriting and selling group activities (22%); and sales of municipal securities (13%). The firm operates on a fully-disclosed basis through Bear, Stearns & Co. The firm proposes to employ Mr. Antoniu as a financial consultant in the area of mergers and acquisitions as an assistant to, and under the direct supervision of, Mr. Novick. He will not be involved in retail sales and will not have any supervisory responsibilities. Mr. Novick testified that Antoniu will be located in an office adjacent to his office and that Antoniu will be required to maintain a daily log of all contacts with clients which Novick will review on a weekly basis.

Mr. Novick has been associated with M. H.

Novick & Co., since its formation in 1972. He became a registered principal in 1972 and has not been the subject of disciplinary proceedings. A routine examination of the firm conducted in September 1983 resulted in the issuance of a letter of caution. The next routine examination of the firm is scheduled for 1985. The firm was fined \$300 for filing late FOCUS Reports on September 25, 1984. The firm does not currently employ any individual subject to a statutory disqualification. Messrs. Antoniu and Novick are not related.

At the hearing, Mr. Antoniu testified that he pleaded guilty to the information in November 1980. From November 1980 until March 1983, Antoniu was permitted by the court and the U.S. Attorney to work in Europe with an executive search firm, Egon Zehnder International, while cooperating with the government in its investigation of the case. In March 1983, he returned to the United States to appear as a witness for the

government in a series of related trials. Since then, he has been involved in limited financial consulting activities, including some clients of M. H. Novick and Company, Inc.^{8/}

Bruce Slovin stated that he is an attorney formerly employed as a mergers and acquisition specialist for Hansen Industries. Hansen Industries utilized Kuhn, Loeb as its investment banker and it was this association which resulted in his acquaintance with Mr. Antoniu. Slovin stated that Mr. Antoniu is today a different person than the one he knew at Kuhn, Loeb. He stated that he would employ Mr. Antoniu today without reservations as to his professional and ethical conduct.

Mr. Antoniu when employed by Kuhn, Loeb

^{8/} A special examination of M. H. Novick & Co., Inc. was conducted on December 12, 1984 to determine whether Antoniu was employed by M. H. Novick & Co., Inc. prior to his registration being approved. The examination indicated that Antoniu was not engaged in any securities activities on behalf of the firm nor was he compensated by the firm, either directly or indirectly. See Attachment No. 6.

in 1977. He currently operates a mortgage brokerage business. He too stated that would rely on Mr. Antoniu without reservation as to his ethical conduct.

Mr. Novick testified that, for the past several years, he has been looking for an assistant in the area of corporate financing. Knowing this, Bear Stearns & Co., referred Antoniu to Novick. Novick stated that he was initially hesitant about hiring Antoniu because of his conviction. He stated, however, that he referred a number of companies which were not yet ready for underwritings to Antoniu for consultation and received favorable comments from these issuers about Antoniu. He subsequently determined to employ Antoniu, but referred the final decision whether to sponsor Antoniu to the firm's five-member executive committee, which recommended that the firm submit a membership continuance application to employ Antoniu. He stated that he has every confidence that, if

given a second chance, Antoniu will not again engage in any improper activities.

After a careful review of the entire record, we have decided to approved the association of Adrian Antoniu as a registered representative with M. H. Novick & Co., Inc. In approving this application, we are aware that the SEC staff has advised our staff that it will strenuously recommend disapproval of the application. Nonetheless, we believe that Mr. Novick recognizes the seriousness of the supervisory responsibilities he is undertaking and that he is capable of providing effective and responsible supervision of Mr. Antoniu's activities. Furthermore, we have considered the testimony of Messrs. Slovin and Marshall as to Mr. Antoniu's change of character and our hearing committee likewise favorably observed Antoniu's demeanor.

Accordingly, we approve Mr. Antoniu's proposed association, subject to the following six conditions: (1) that Mr. Novick conduct a

weekly review of Mr. Antoniu's activities, and that, in Novick's absence, this review be performed by the chief financial officer of M. H. Novick & Co., Inc.; (2) that Mr. Antoniu not be permitted to open any customer accounts or accept any customer orders; (3) that Mr. Antoniu be required to maintain his account and any related accounts at the firm with advance approval for all orders; (4) that there be no violation of any of the conditions of Mr. Antoniu's probation and that, if violations occur, his employment be terminated immediately; (5) that Mr. Antoniu be required to disclose to all of his clients, prior to the commencement of his association, the fact that he has been convicted and the nature of his conviction; and (6) that Mr. Antoniu be required to work in the office where Mr. Novick works full-time.

Accordingly, pursuant to the provisions of Rule 19h-1, the association of Adrian Antoniu with M. H. Novick & Co., Inc. shall

become effective thirty (30) days from the date of this notice, unless otherwise ordered by the Securities and Exchange Commission.

On Behalf of the Board of Governors,

James M. Cangiano, Secretary

Attachments:

1. Application for registration of Adrian Antoniu to become employed as a registered representative with M. H. Novick & Co., Inc.
2. Judgment of Probation/Commitment Order, United States v. Adrian Antoniu (S.D.N.Y. March 31, 1983).
3. Membership continuance application of M. H. Novick & Co., Inc. to employ Adrian Antoniu.
4. NASD registration records for Adrian Antoniu and Michael H. Novick.
5. Transcript of hearing held before a Committee of the Association in the Matter of the Application of Adrian Antoniu with M. H. Novick & Co., Inc. on February 27, 1985.
6. Letter to Andrew Barnes, Esq., NASD from Virginia F. T. Mariano, Supervisor, NASD District No. 8, dated February 6, 1985.

Memorandum Opinion of SEC Rel. No 34-22383,
Admin. Proc. File No. 3-6553, September 3,
1985:

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- 22383 ; Admin. Proc. File No.
3- 6553)

In the Matter of Notice by the
NATIONAL ASSOCIATION OF SECURITIES DEALERS,
INC.

of the Proposed Association with a Member Firm
of
ADRIAN ANTONIU

Memorandum Opinion and Order Directing the
National Association of Securities Dealers,
Inc. to bar the proposed association with a
member firm of Adrian Antoniu, a person
subject to a statutory disqualification.

September 3, 1985

I.

On November 13, 1980, Adrian Antoniu pled guilty to two counts of an information charging him with violation of 15 U.S.C. Sections 78j(b) and 78FF, and 18 U.S.C. Section 2. On March 31, 1983, Antoniu received a suspended sentence of thirty-nine months, was placed on unsupervised probation for the same period of time, and was fined \$5,000.

Antoniou was employed in the corporate finance department of Morgan Stanley & Co. from about August 1972 to May 1975, and then in the merger and acquisition department of Kuhn Loeb & Co. until about July 1978. The information to which Antoniu pled guilty details a complex scheme lasting five years by means of which Antoniu and his co-conspirators

misappropriated confidential, non-public information from Morgan Stanley and Kuhn Loeb, and used that information to profit from securities transactions.

While at Morgan Stanley, Antoniu would supply information on potential takeovers or mergers obtained in the course of his employment to a confederate who would trade on the stolen information in accounts set up for that purpose. The two men split the profits from the trading.

This pattern continued and expanded when Antoniu switched employment to Kuhn Loeb. In addition to trading on information stolen from Kuhn Loeb, he enlisted the participation of a former colleague at Morgan Stanley who continued to supply confidential information from that firm.

Antoniou also conveyed misappropriated

information to two other confederates with whom he shared trading profits. Only Antoniu knew the identities of all of the conspirators.

The National Association of Securities Dealers, Inc. ("NASD") has notified us, as required by the Securities Exchange Act 1/, that, notwithstanding the statutory disqualification arising from the conviction, 2/ it proposes to permit the association of Antoniu with a member firm. Our findings are based upon an independent review of the record.

II.

In reaching its determination, the NASD relied on the testimony of former associates of

1/ See Section 15A(G)(2) of the Act and Rule 19h-1 thereunder.

2/ See Section 3(a)(39) of the Act.

Antoniou who stated that he has completely changed his ways since the period of his misconduct, and that they have no reservations about his present professional or ethical standards of conduct.

The NASD also relied on the testimony of the president of the member firm proposing to employ Antoniou who stated that he has every confidence that Antoniou will not engage in any improper activities. The NASD concluded that its member was capable of providing adequate supervision, and the NASD's proposed approval was made subject to supervisory and other restrictions. Finally, the NASD's hearing committee was favorably impressed by Antoniou's demeanor at the hearing.

III.

After reviewing the record submitted by the NASD, we conclude that it is in the public

interest and necessary for the protection of investors not to permit Antoniu in the securities business at this time. The NASD based its approval of Antoniu's association largely upon the assessment by Antoniu's former colleagues that he has been rehabilitated. It has presented us with letters attesting to Antoniu's good character, and testimony on his behalf. The letters and testimony, however, do not provide justification for allowing Antoniu's reentry into the securities business so soon after the conclusion of the criminal proceedings against him.

We have also reviewed the six conditions imposed by the NASD on its proposed approval of Antoniu's association. These conditions do not provide adequate protection against a repetition of the type of misconduct in which Antoniu previously engaged.

Antoniou's conviction was not based on a isolated transaction. Rather, he engaged in a protracted and sophisticated conspiracy to violate the law and circumvent surveillance designed to prevent insider trading.

Notwithstanding claims of rehabilitation, given the egregious nature of Antoniu's crimes, the short period that has elapsed since his judgment of conviction was entered, and the fact that Antoniu will remain on probation for approximately one more year, we conclude that it is in the public interest and necessary for the protection of investors to direct the NASD to bar Antoniu from becoming associated with the member firm. 3/

Accordingly, it is ORDERED that the National Association of Securities Dealers, Inc. be, and it hereby is, directed to bar Adrian

3/ Antoniu has requested an oral argument in this matter. However, in our view, oral argument would serve no useful purpose and, accordingly, Antoniu's request is denied.

Antoniou from becoming associated with the
member firm.^{4/}

By the Commission

John Wheeler

-
- ^{4/} We have carefully considered all of the arguments of Antoniou and the NASD. Their contentions are rejected or sustained to the extent that they are inconsistent or in accord with the views expressed in this opinion.

Order of SEC Instituting Proceedings in the
Matter of Adrian Antoniu, Admin. Proc. 3-6566,
September 19, 1985:

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

Administrative Proceeding
File No. 3-6566

SEP 19 1985

	:	ORDER INSTITUTING PUBLIC
In the Matter of	:	PROCEEDINGS AND NOTICE
	:	OF A HEARING PURSUANT TO
ADRIAN ANTONIU	:	SECTIONS 15(b) (6) AND
	:	19(h) OF THE SECURITIES
	:	EXCHANGE ACT OF 1934

I.

The Commission's public official files
disclose that:

1. Morgan Stanley & Co., Inc. ("Morgan Stanley") is an investment banking firm that

has been registered with the Commission pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") from June 3, 1970 to the present.

2. Kuhn Loeb & Co. ("Kuhn Loeb"), was an investment banking firm that was registered with the Commission pursuant to Section 15(b) of the Exchange Act from January 1, 1936 to October 9, 1977.

3. Lehman Brothers Kuhn Loeb, Inc. ("Lehman Kuhn Loeb") was an investment banking firm that was registered with the Commission pursuant to Section 15(b) of the Exchange Act from December 27, 1970 to January 28, 1985.

II.

As a result of an investigation, the Division of Enforcement alleges that:

A. From in or about August 1972 through May 1975, Adrian Antoniu ("Antoniu") was employed in the corporate finance department of Morgan Stanley and held a license as a registered representative.

B. From in or about May 1975 through July 1978, Antoniu was employed in the mergers and acquisition department of Kuhn Loeb and Lehman Kuhn Loeb and held a license as a registered representative.

C. On November 13, 1980, in the Southern District of New York, Antoniu pled guilty to two counts of an information charging securities fraud in violation of 15 U.S.C. § 78(j)(b) and 78 ff and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5 and 18 U.S.C. § 2. [U.S. v. Antoniu 80 CR. 742 (CES)].

D. Antoniu's guilty plea relates

specifically to securities purchases based on material non-public information stolen from his employer and relating to the following proposed corporate transactions:

<u>Bidder</u>	<u>Target</u>	<u>Trading Month and Year</u>
Sandoz Seed Co.	Northrup, King & Co.	August 1976
Warner-Lambert	Deseret Pharmaceutical Company, Inc.	November 1976

E. On March 31, 1983, in the Southern District of New York, a judgment of conviction was entered against Adrian Antoniu for the violations described in Paragraph C, and was sentenced to thirty-nine months unsupervised probation.

III.

In view of the facts presented by the Division of Enforcement, the Commission deems it necessary and appropriate in the public

interest that public proceedings be instituted to determine:

A. Whether the allegations set forth in Part II hereof are true, and in connection therewith to afford the respondent an opportunity to establish any defenses to such allegation; and

B. What, if any, remedial action is appropriate in the public interest pursuant to Sections 15(b) and 19(h) of the Exchange Act.

IV.

IT IS HEREBY ORDERED, that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof be held at a time and place to be fixed and before an Administrative Law Judge to be designated by further order as provided by Rule 6 of the Commission's Rules of Practice.

IT IS FURTHER ORDERED that the respondent file an answer to the allegations contained in this Order within fifteen (15) days after service upon him of the Order as provided by Rule 7 of the Commission's Rules of Practice.

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 25169 / December 3, 1987

Admin. Proc. File No. 3-6566

In the Matter of :

ADRIAN ANTONIU :
1117 Marquette Avenue :
Minneapolis, Minnesota :

OPINION OF THE COMMISSION

BROKER-DEALER PROCEEDINGS

Ground for Remedial Action

Conviction

Where employee of registered broker-dealer was convicted of trading on the basis of inside information that he misappropriated from another firm with the help of a confederate, held, in the public interest to bar

employee from association with any
broker or dealer.

APPEARANCES:

David W. Stratman, for respondent.

Anne C. Flannery, Jason R. Gettinger, Judith
F. Kozlowski and Mark A. Gomez, of the
Commission's New York Regional Office, for the
Division of Enforcement.

I.

Adrian Antoniu appeals from the decision of an
administrative law judge. The law judge found
that Antoniu was convicted, on his plea of
guilty, of two counts of securities fraud. He
concluded that Antoniu should be barred from
association with any broker or dealer. Our
findings are based on an independent review of
the record.

II.

Antoniou worked in the corporate finance department of Morgan Stanley & Co., Inc. from 1972 until May 1975, when he joined the newly established acquisitions department of Kuhn Loeb & Co. He was dismissed by Kuhn Loeb (which had become Lehman Brothers Kuhn Loeb, Inc.) in July 1978, when it learned that he was a potential target of the investigation that culminated in his conviction.

On November 13, 1980, Antoniu pled guilty to two counts of a criminal information charging him with securities fraud. 5/ The charges

5/ United States v. Antoniu, 80 Cr. 742 (S.D.N.Y.). Antoniu complains that the law judge's use of the criminal information and Antoniu's allocution went beyond the limited purpose for which they were admitted into evidence; namely, to show the particular misconduct for which Antoniu was convicted. However, we have confined our use of those documents to the specific counts to which Antoniu pled guilty. Thus we need not reach the issue that Antoniu raises.

covered by Antoniu's guilty plea may be summarized as follows. In 1976, while employed by Kuhn Loeb, Antoniu caused a confederate at Morgan Stanley to misappropriate from that firm material, non-public information concerning impending takeover bids by Morgan Stanley clients for Northrup, King & Co. and Deseret Pharmaceutical Co., Inc. Upon receipt of that information, Antoniu passed it along to other confederates who purchased 1,500 shares of Northrup and 2,000 shares of Deseret prior to public announcement of the planned takeover efforts. In accordance with his arrangement with his accomplices, Antoniu received a percentage of the profits realized from the sale of those securities, as did his confederate at Morgan Stanley. On August 11, 1982, a judgment of conviction was entered against Antoniu. 6/

6/ The lengthy delay in entering judgment was due to the prosecutor's desire for time in which to assess the degree of cooperation

III.

A. Section 15(b)(6) of the Securities Exchange Act empowers us to sanction any person associated with a broker or dealer, or seeking to become so associated, who has been convicted of certain offenses. Antoniu argues that he may not be sanctioned under that section because he was not associated with a broker or dealer, or a person seeking such association, when these administrative proceedings were instituted. He further asserts that, when the offenses for which he was convicted occurred, Kuhn Loeb, his employer, was operating as an investment banker, not a broker-dealer.

These contentions are without merit. We have consistently interpreted Section 15(b)(6) as authorizing proceedings against persons who were associated with a broker or dealer at the

that Antoniu provided.

time of their misconduct, regardless of their subsequent employment or status. 7/ At the time of the offenses for which he was convicted, Antoniu was associated with Kuhn Loeb, a firm registered with this Commission as a broker and dealer. By reason of its registration, Kuhn Loeb was necessarily a broker and dealer within the meaning of Section 15(b)(6). In addition, it appears that Antoniu was seeking to become associated with a broker-dealer when these proceedings were instituted. Shortly prior to bringing this action, we reversed a determination by the National Association of Securities Dealers ("NASD") that would have permitted Antoniu to work for a brokerage firm despite his conviction. 8/ Antoniu's appeal from our

7/ See John Kilpatrick, Securities Exchange Act Release No. 23251 (May 19, 1986), 35 SEC Docket 1231, 1238-1239.

8/ Adrian Antoniu, Securities Exchange Act Release No. 22383 (September 3, 1985), 33 SEC Docket 1574.

decision, which is still pending, 9/
demonstrates that he has not abandoned his
effort to become associated with a broker-
dealer.

B. Under Section 15(b)(6) of the Exchange
Act, a conviction for any offense specified in
Section 15(b)(4)(B) of the Act within the
previous ten years is a basis for taking
remedial action against the person convicted.
Section 15(b)(4)(B) includes in its list of
offenses any felony which this Commission
finds "(i) involves the purchase or sale of
any security" or "(ii) arises out of the
conduct of the business of a broker [or]
dealer." Antoniu argues that his crime did
not involve the purchase or sale of
securities. He contends that his only offense
was the transmission of confidential
information to persons whose trading on the

9/ Antoniou v. SEC, No. 85-5384 (8th Cir.).
The appeal has been stayed pending the
outcome of this proceeding.

basis of that information was not part of his offense. He further argues that he was not given sufficient notice of our staff's alternative theory that his crime arose from the conduct of a broker-dealer's business, and was therefore denied the opportunity to present a proper defense to that charge.

These contentions lack substance. The violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder for which Antoniu was convicted clearly involved the purchase and sale of securities. In fact, the purchase and profitable resale of securities was the sole purpose of Antoniu's fraudulent scheme. 10/ His attempt to distinguish the phrases "in connection with" (the standard of Section 10(b)) and "involves" (the standard of Section 15(b)(4)(B)(i)) cannot be supported by

10/ See SEC v. Materia, 745 F.2d 197, 203 (2d Cir. 1984); United States v. Newman, 664 F.2d 12, 17-19 (2d Cir. 1981), cert. denied, 464 U.S. 863 (1983).

precedent or logic.

Antoniou's offenses also arose from the conduct of a dealer's business within the meaning of Section 15(b)(4)(B)(ii). 11/ Antoniu was given adequate notice that this provision was an alternate basis for action in this case. The order for proceedings cites Section 15(b)(6) of the Act which incorporates Section 15(b)(4)(B) by reference. More importantly, Antoniu was specifically informed by our staff that it considered Subsection (ii) of Section 15(b)(4)(B) an additional basis for proceeding against him. And the administrative law judge offered Antoniu additional time to prepare his defense after he was informed of that fact. However, Antoniu did not seek the additional time offered by the law judge. Under the circumstances, he has no basis for

11/ Morgan Stanley was named dealer-manager in connection with the two corporate acquisitions that were the basis for the specific charges to which Antoniu pled guilty.

IV.

In 1985, as noted above, we reversed an NASD decision that would have permitted Antoniu to work for an NASD member firm despite his conviction. 13/ Antoniu contends that we thereby prejudged the issues presented here and are disqualified from deciding this appeal. 14/ He further claims that our reversal of the NASD's determination constituted an "election of remedies" that precluded us from instituting this action, and that Rule 19h-1(a)(7) under the Exchange Act,

12/ See Jesse Rosenblum, Investment Advisers Act Release No. 913 (May 17, 1984), 30 SEC Docket 857, 862 n.15.

13/ See n. 4, supra.

14/ We need not reach Antoniu's argument that Commissioner Cox is additionally disqualified because he referred to Antoniu in a speech. Commissioner Cox has recused himself from all participation in the decision of this matter.

which deals with our review of actions such as that taken by the NASD, operated to foreclose these proceedings.

The circumstance that, in the exercise of our statutory function, we ruled against Antoniu in a factually related case is no basis for disqualifying this Commission from deciding this appeal. 15/ Moreover, our earlier decision, which dealt only with Antoniu's application for a specific employment, was based on a different record. It cited as reasons for the result it reached "at [that] time" ... "the short period that [had then] elapsed since Antoniu's judgment of conviction [had been] entered, and the fact that [at that time] Antoniu [was going to] remain on probation for approximately one more year."16/

15/ Cf. NLRB v. Donnelly Garment Co., 330 U.S. 219, 236-237 (1947); United States v. Partin, 552 F.2d 621, 636-639 (5th Cir.), cert denied, 434 U.S. 903 (1977); Augion-Unipolar Corporation, 44 S.E.C. 438, 441 (1970).

16/ Adrian Antoniu, supra, 33 SEC Docket at 1575-1576.

"In denying Antoniu's employment application, we made no binding election of remedies." We have often pointed out that the Exchange Act provides several parallel and compatible procedures for the attainment of its objectives, and the use of more than one avenue is appropriate in many circumstances.

17/ The purpose of and the issues raised in this action are different from those in the earlier proceeding which dealt only with the question of whether Antoniu should be permitted to work for a particular employer under specified restrictions at a particular time. Here we must make a different and much more far-reaching judgment - whether under the circumstances present the public interest requires Antoniu's total exclusion from the securities business.

Finally, there is no merit in Antoniu's claim

17/ See, e.g., Lile & Co., Inc., 42 S.E.C. 664, 670 (1965); Kamen & Company, 43 S.E.C. 97, 108 n.17 (1966).

that Rule 19h-1(a)(7) under the Exchange Act operated to foreclose these proceedings. That rule only restricts the institution of disciplinary proceedings against an individual if, among other things, we are in the process of conducting an extended review of a self-regulatory organizations' approval of the individual's proposed employment. Here we did not institute proceedings against Antoniu until after we had completed that review by reversing the NASD's approval of Antoniu's proposed employment.

V.

Antoniou argues that in various respects he was denied due process. He asserts that he was singled out for prosecution because he is foreign-born, that he was denied the opportunity to prove his allegations concerning our staff's motivation and bias, and that his cross-examination of certain

staff witnesses was improperly curtailed when they invoked grand jury secrecy rules.

We find no impropriety in the conduct of these proceedings. Antoniu had the burden of proving that the institution of this action was based on constitutionally impermissible factors. 18/ And, contrary to his assertion, he was given an adequate opportunity to prove his allegations. However, he failed to do so. 19/

The staff witnesses to whom Antoniu refers were former federal prosecutors who were called to rebut Antoniu's claims concerning the extent of his cooperation with the government. When Antoniu's counsel sought to

18/ See Baltimore Gas & Electric Co. v. Heintz, 760 F.2d 1408, 1419 (4th Cir.), cert. denied, 106 S. Ct. 141 (1985); United States v. Berrios, 501 F.2d 1207, 1211 (2d Cir. 1974).

19/ We have considered the testimony of Jason R. Gettinger, a staff member in our New York Regional Office, that Antoniu elicited. That testimony, which the law judge excluded, is hereby admitted into evidence.

elicit information from those witnesses concerning the grand jury testimony of persons other than Antoniu, they invoked grand jury secrecy rules. 20/ It appears that the witnesses' refusal to disclose matters occurring before the grand jury was entirely proper. In any event, Antoniu was not prejudiced. Not only were the matters that his counsel sought to elicit irrelevant to the issues in this case, but we have not relied on the testimony of the witnesses in question in making any determination herein. 21/

20/ See Rule 6(e) of the Federal Rules of Criminal Procedure.

21/ Antoniu further asserts that a member of our staff improperly communicated with NASD counsel while Antoniu's employment application was pending before the NASD. However, there was no impropriety. Our staff's role was simply in furtherance of our general NASD oversight function. Moreover, our staff merely transmitted to the NASD documents that were a matter of public record. In any event, that contact, which occurred prior to the institution of this proceeding, has no relevance to the matters at issue here.

VI.

Antoniou contends that the imposition of a bar is not only harsh but unjust. He asserts that he has already been severely punished, that he cooperated with government prosecutors, and that the record does not support the law judge's conclusions that he does not appreciate the gravity of his misconduct and has not been rehabilitated. We do not agree that the sanction assessed by the law judge is too severe.

The misconduct to which Antoniou pled guilty would alone be sufficient to justify the bar that we are imposing in this case. However, as established by the testimony that Antoniou gave at the trial of a confederate, which is summarized below, 22/ that misconduct was only

22/ Antoniou argues that the transcript of his testimony at that trial was only admitted into evidence with respect to the weight that should be given his cooperation with the government in assessing the sanction to

a small part of a much broader fraudulent scheme that extended over a lengthy period of time.

When Antoniu joined Morgan Stanley in 1972, he was made aware of the firm's policy prohibiting disclosure of confidential information obtained in the course of his employment, and he subsequently received numerous memoranda reiterating that prohibition. Yet, within a year, he entered into a partnership with James Newman, a securities trader then working for a New York brokerage house, to exploit the information he had been told to keep confidential. Using his advance knowledge of clients' acquisition plans, Antoniu told Newman what securities to buy and when to sell them, and they split

be imposed in the public interest. However, Antoniu's testimony was also introduced on the public interest issue as "perhaps the best evidence of the particular scheme in which Mr. Antoniu was involved."

after-tax profits. Antoniu cautioned Newman that the information he was getting was very sensitive, and that he must not discuss it with anyone else since, if Antoniu's activities were discovered, he would be fired.

Experiencing success with Newman, Antoniu expanded his operations in 1974 by making similar arrangements with two friends who traded through European accounts. Antoniu was careful to conceal the identity of his three partners from each other. In the fall of 1974, Antoniu and Newman became concerned about possible detection. Using negotiable treasury notes as collateral, they established a trust account in a foreign bank through which they could channel future trading. Antoniu borrowed the treasury notes from two other friends, who were thereafter included in some of his profit-sharing arrangements.

Antoniou's scheme hit a temporary snag when

Morgan Stanley requested his resignation at the end of 1974. Faced with severance from his source of information, Antoniu induced a fellow Morgan Stanley employee, E. Jacques Courtois, to join his operation for a one-third share of the profits. Over the next several years, Courtois supplied Antoniu with a number of tips about pending acquisitions, including those set forth above, which Antoniu passed on to his confederates. Meanwhile, Antoniu was able to contribute several profitable tips of his own concerning the confidential activities of clients of Kuhn Loeb. 23/ When Antoniu received a telephone call in 1977 from a staff investigator inquiring about his relationship with Newman, he denied recommending the purchase of any stocks to Newman, and stated that he knew Newman only "very superficially" as someone

23/ Antoniu signed a form at Kuhn Loeb acknowledging his awareness that information learned through his employment must be kept confidential.

who occasionally called him to suggest investment opportunities. He immediately telephoned Newman and obtained Newman's assurance that, if he were called, he "would stick to the same story." However, subsequent inquiries of Kuhn Loeb by federal prosecutors resulted in Antoniu's dismissal and caused him to flee the country. 24/

Antoniou's misconduct could hardly be more serious. As the law judge observed, it was not the product of impulse or attributable to a temporary lapse in judgment or ethics. Rather, it arose from a carefully conceived scheme that Antoniu devised, using accomplices that he recruited. He engineered a protracted and complex operation to betray his employers' trust by misappropriating confidential

24/ Antoniu went to Europe, ending up in Milan where he worked until returning to the United States in December 1983. During his stay in Italy, he came to the United States intermittently in connection with the criminal proceedings against him and his confederates.

information for personal gain.

As the law judge found, it does not appear that Antoniu even now appreciates the seriousness of his offense. When asked if he pled guilty because he had committed a crime, Antoniu stated:

"No. I pleaded guilty as part of a cooperation agreement to resolve this problem. Nobody at that time and since then has been able to clearly explain to me whether I committed a crime and what the crime was I understood that I was pleading guilty to a crime. How serious or not I do not know."

The law judge, who had the opportunity to observe Antoniu as a witness, not only found that he "lacks a sense of real guilt about his crimes," but observed that, on cross-examination, "with a demeanor and tone of voice tinged at times with arrogance, [Antoniu] gave answers that suggested he thought of himself more as a victim of

persecution than a convicted criminal."

Given Antoniu's lack of remorse, his cooperation with the government carries little weight here where we must assess, in light of his egregious misconduct, what sanction is appropriate in the public interest. Antoniu's lack of contrition leaves us with scant inclination towards leniency.

As we have so often emphasized, the securities industry is heavily dependent upon the integrity of its participants. We must protect the public from persons like Antoniu whose demonstrated conduct falls so far below acceptable standards of honesty and trust. We recognize the serious effect of the sanction we are imposing. Yet we are convinced that a lesser remedy will not suffice. Under all the circumstances, particularly the egregious and protracted nature of Antoniu's misconduct, we conclude that the public interest requires

that Antoniu be barred from association with any broker or dealers.

An appropriate order will issue. 25/

By the Commission (Commissioners PETERS, GRUNDFEST and FLEISCHMAN); Chairman RUDER and Commissioner COX not participating.

Jonathan G. Katz
Secretary

25/ All of the arguments advanced by Antoniu have been considered. They are rejected or sustained to the extent that they are inconsistent or in accord with the views expressed herein.

Denial of Petition for Rehearing En Banc in
the United States Court of Appeals for the
Eighth Circuit, Antoniou v. SEC, Nos. 85-
5384/88-1095, Jul. 31, 1989:

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

CORRECTED ORDER

Nos. 85-5384/88-1095

Adrian Antoniu,

Petitioner,

vs.

Securities and Exchange
Commission,

Respondent.

★
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★ Petition
★ for Review
★
★
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Petitioner's suggestion for rehearing en banc has been considered by the court and is denied by reason of the lack of a majority of the active judges voting to rehear the case en banc.

Petition for rehearing by the panel is also denied.

July 31, 1989

Order Entered at the Direction of the Court:

s/Robert D. St. Vrain

Clerk, U.S. Court of Appeals, Eighth Circuit.

Denial of Application for Attorney's Fees in
the United States Court of Appeals for the
Eighth Circuit, Antoniou v. SEC, Nos. 85-
5384/88-1095, Aug. 14, 1989:

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

Nos. 85-5384/88-1095

Adrian Antoniu,

Petitioner,

vs.

Securities and Exchange
Commission,

Respondent.

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Petition
for Review
of Securities
and Exchange
Commission

The petitioner's application for attorney fees is denied without prejudice; the court finds that the application is premature since it has not been determined that the appellant at this time is a prevailing party.

August 14, 1989

Order Entered at the Direction of the Court:

s/Robert D. St. Vrain

Clerk, U.S. Court of Appeals, Eighth Circuit.

Judgement in the United States Court of
Appeals for the Eighth Circuit, Antoniou v.
SEC, Nos. 85-5384/88-1095, June 19, 1989:

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

JUDGEMENT

No. 85-5384 and 88-1095

Adrian Antoniu,

Petitioner,

v.

Securities and Exchange
Commission,

Respondent.

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Appeals from
Petitions
for Review
of Orders
of the
Securities
and Exchange
Commission.

This cause was submitted on the petition
for review of an order of the Securities and
Exchange Commission, administrative record,
briefs of the parties, and was argued by
counsel.

Upon consideration of the premises it is
hereby adjudged and decreed that the

proceedings in Antoniu I are affirmed. It is further adjudged and decreed that all Commissioner proceedings in which Commissioner Cox participated occurring after Commissioner Cox's speech was given are nullified and the case is remanded to the Commission with directions to make a de novo review of the evidence without any participation by Commissioner Cox.

June 19, 1989

**SEC's Opposition to Petitioner's Application
for Attorney's Fees, Page 13, July 1989,
footnotes omitted, emphasis added:**

Decision." (A2 R.1759-1776). (6) Commissioner Cox did not hear oral argument on July 30, 1987 (A2 R.1894, 1899). (7) In its December 3, 1987 order, the Commission stated that Commissioner Cox recused himself "from all participation in the decision of this matter" (A2 R.1915 n.10).

In sum, the full extent of Commissioner Cox's "post-speech" participation in this matter was the rejection of the proposed settlement offer and his later recusal from all participation in the matter. Although the record does not reflect the exact date of Commissioner Cox's recusal, it is apparent that this recusal preceded any adjudication before the Commission.

SEC's Proffer of Evidence, page 2, August 4, 1989, footnotes omitted, emphasis added:

did not contain an explicit indication of when Commissioner Cox had recused himself and thus did not obviate the possible inference that Commissioner Cox had participate to some extent in the Commission's deliberation on Mr. Antoniu's appeal from the administrative law judge's initial decision.

Because petitioner's Sworn Memorandum in Support of Application for Attorney's Fees and his Motion to Supplement the Record reflect a misunderstanding of what in fact occurred, the Commission respectfully requests that the Court accept the following proffer of proof. There is no "document of recusal" in the administrative record, nor does one exist in other files. This proffer is based on sworn declarations by the Secretary to the Commission and the Confidential Assistant to

Commissioner Cox (Exhibits 1 and 2), and on statements which Commissioner Cox has made to counsel for the Commission and which he is prepared to

Section 3(a)(39) of the Securities Exchange Act of 1934, 15 U.S.C. 78(c)(a)(39), provides:

(a) When used in this title, unless the context otherwise requires --

* * *

(39) A person is subject to a "statutory disqualification" with respect to membership or participation in, or association with a member of, a self-regulatory organization, if such person--

* * *

(E) has committed or omitted any act enumerated in subparagraph (D) or (E) or paragraph (4) of section 15(b) of this title, has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within ten years of the date of the filing of an application for membership or participation in, or to become

associated with a member of, such
self-regulatory organization,

Section 15(b)(4)(B) of the Securities Exchange
Act of 1934, 15 U.S.C. 78o(b)(4)(B), provides:

(4) The Commission, by order, shall
censure, place limitations on the
activities, functions, or operations of,
suspend for a period not exceeding twelve
months, or revoke the registration of any
broker or dealer if it finds, on the
record after notice and opportunity for
hearing, that such censure, placing of
limitations, suspension, or revocation is
in the public interest and that such
broker or dealer, whether prior or
subsequent to becoming such, or any person
associated with such broker or dealer,
whether prior or subsequent to becoming so
associated--

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(B) has been convicted within ten years preceding the filing of any application for registration or at any time thereafter of any felony or misdemeanor which the Commission finds--

(i) involves the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, or conspiracy to commit any such offense;

(ii) arises out of the conduct of the business of a broker, dealer, municipal securities dealer, government securities broker, government securities dealer, investment adviser, bank, insurance company, fiduciary, transfer agent, or entity or person required to be registered under the Commodity

Exchange Act (7 U.S.C. 1 et seq.);

(iv) involves the violation of section 152, 1341, 1342, or 1343 or chapter 25 or 47 of title 18, United States Code.

Section 15(b)(6) of the Securities Exchange Act of 1934, 15 U.S.C. 78o(b)(6), provided (at all times pertinent to this case):

(6) The Commission, by order, shall censure or place limitations on the activities or functions of any person associated, or seeking to become associated, with a broker or dealer, or suspend for a period not exceeding twelve months or bar any such person from being associated with a broker or dealer, if the Commission finds, on the record after notice and opportunity for hearing, that

such censure, placing of limitations, suspension, or bar is in the public interest and that such person has committed or omitted any act or omission enumerated in subparagraph (A), (D), or (E) of paragraph (4) of this subsection, has been convicted of any offense specified in subparagraph (B) of said paragraph (4) within ten years of the commencement of the proceedings under this paragraph, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of said paragraph (4).

It shall be unlawful for any person as to whom such an order suspending or barring him from being associated with a broker or dealer is in effect willfully to become, or to be, associated with a broker or dealer without the consent of the Commission, and it shall be unlawful for any broker or dealer to permit such a person to become, or remain, a person

associated with him without the consent of the Commission, if such broker or dealer knew, or in the exercise of reasonable care should have known, of such order.

Rule 240.19h-1(7) under the Securities Exchange Act of 1934, 17 C.F.R. 240.19h-1(7), provides:

(7) The Commission, by written notice to a self-regulatory organization on or before the thirtieth day after receipt of a notice under this Rule, may direct that such organization not admit to membership, participation, or association with a member any person who is subject to a statutory disqualification for a period not to exceed an additional 60 days beyond the initial 30 day notice period in order that the Commission may extend its

consideration of the proposal; *Provided, however, That* during such extended period of consideration, the Commission will not direct the self-regulatory organization to bar the proposed admission to membership, participation or association with a member pursuant to section 6(c)(2), 15A(g)(2), or 17A(b)(4)(A) of the Act, and the Commission will not institute proceedings pursuant to section 15(b) or 15B of the Act on the basis of such disqualification if the self-regulatory organization has permitted the admission to membership, participation or association with a member, on a temporary basis, pending a final Commission determination.

**Article I, Section 13(c) of the NASD Bylaws
(December 1984 reprint), provided:**

(c) Any member of broker or dealer may make an application to the Corporation requesting continuance in or admission to membership notwithstanding the disqualification. If an application is filed with the Corporation, the applicant and any person whose association with the applicant gives or would give rise to the disqualification shall be given an opportunity to be heard with respect to the application and shall demonstrate why the application should be granted. If requested, or if directed by the Corporation, a hearing shall be held before a committee comprised of at least one member of the appropriate District Committee and at least one member of the Board of Governors, and a record shall be

kept. Such committee shall make a recommendation as to the application which shall be forwarded to the Board of Governors together with the record.

**Section 15(b)(4)(6) of the S.E.A., 15 U.S.C.
78o(b)(6) as amended on December 4, 1987:**

(6) The Commission, by order, shall
censure or place limitations on the
activities or functions of any person
associated, seeking to become associated
with a broker or dealer, or suspend for a
period not exceeding twelve months or bar
any such person from being associated with
a broker or dealer, if the Commission
finds, on the record after notice and
opportunity for hearing, that such
censure, placing of limitations,
suspension, or bar is in the public
interest and that such person has
committed or omitted any act or omission
enumerated in subparagraph (A), (D), or
(E) of paragraph (4) of this subsection,
has been convicted of any offense
specified in subparagraph (B) of said

paragraph (4) within ten years of the commencement of the proceedings under this paragraph, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of said paragraph (4).

It shall be unlawful for any person as to whom such an order suspending or barring him from being associated with a broker or dealer is in effect willfully to become, or to be, associated with a broker or dealer without the consent of the Commission, and it shall be unlawful for any broker or dealer to permit such a person to become, or remain, a person associated with him without the consent of the Commission, if such broker or dealer knew, or in the exercise of reasonable care should have known, of such order.